THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte DAVID P. JORDAN

_____

Appeal No. 1997-2700
Application 08/307,249

_____

ON BRIEF

_____

Before URYNOWICZ, JERRY SMITH, and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-24, all of the claims present in the present application. The claimed invention relates to a system

and method for preventing fraudulent telephone calls in a telecommunications network. More particularly, Appellant indicates at pages 2 and 3 of the specification that, on a successful comparison by a voice recognition device of a caller's spoken utterance with a stored voice print, a call is completed to its destination. If the voice print and utterance do not match, various risk factors associated with the call are considered for determining whether the call is to be completed.

Claim 1 is illustrative of the invention and reads as follows:

1. In a telecommunications network, a system for preventing fraudulent telephone calls comprising:

means for identifying a call being placed by a caller to a destination over said network;

means for prompting said caller to speak an utterance;

means for recognizing said utterance spoken by said caller;

verification means for comparing the voice of said caller against a prestored voice signature of an authentic caller corresponding to said utterance to determine if said caller is said authentic caller; and

means for providing at least one risk factor relating to said call to said verification means when the voice of said

caller fails to match the voice signature of said authentic caller so that said verification means can take into consideration said risk factor in determining whether said call is from said authentic caller.

The Examiner relies on the following prior art:

Hou et al. (Hou)	5,325,421	Jun. 28, 1994
Johnson et al. (Johnson)	5,345,595	Sep. 06, 1994
Hunt et al. (Hunt)	5,365,574	Nov. 15, 1994
	(Filed Nov. 25, 1992)	

Claims 1-3, 8-13, 18-20, and 24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Hunt. Claims 4-6, 14-16, 21, and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hunt in view of Hou. Claims 7, 17, and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over
Hunt in view of Johnson.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs[1] and Answers for the

[1] The Appeal Brief (revised) was filed July 24, 1996. In response to the Examiner's Answer dated September 25, 1996, a Reply Brief was filed November 15, 1996. The Examiner entered

respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the Examiner and the evidence of anticipation and obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answers. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered [see 37 CFR § 1.192(a)].

It is our view, after consideration of the record before us, that the disclosure of Hunt fully meets the invention as recited in claims 1-3, 8-13, 18-20, and 24. We are also of the view that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary

---

the Reply Brief and submitted a supplemental Examiner's Answer dated February 19, 1997.

skill in the art the obviousness of the invention set forth in claims 4-7, 14-17, and 21-23. Accordingly, we affirm.

Appellant has nominally indicated (Brief, page 8) that, for purposes of this appeal, the claims do not stand or fall together. It is apparent, however, that Appellant has organized his arguments by grouping the claims subject to each rejection as a single group. We will consider the claims separately only to the extent that separate arguments are of record in this appeal. Any claim not specifically argued will stand or fall with its

base claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

We will consider first the rejection of claims 1-3, 8-13, 18-20, and 24 under 35 U.S.C. § 102(e) as being anticipated by Hunt. We note that this rejected group of claims includes all of the independent claims (i.e. claims 1, 11, and 19) on appeal. Anticipation is established only when a single prior

art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Assoc, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

With respect to independent claims 1, 11, and 19, the Examiner has indicated how the various limitations are read on the disclosure of Hunt (Answer, pages 4-6). In particular, the Examiner makes reference to the disclosure at column 6, line 59 to column 7, line 7 of Hunt which describes the operation of the

call verification system when there is only an approximate match between a spoken voice and a stored voice print, such a match not falling within a predetermined acceptance threshold.

In response, Appellant’s arguments primarily center on

the alleged failure of Hunt's call verification system to disclose the risk factor feature present in each of independent claims 1, 11, and 19. Appellant's view is summarized at page 4 of the Reply Brief as follows:

> Putting it simply, the instant invention inputs risk factor(s) into play only after a determination has been made that the voice of the caller fails to match the stored voice signature of the authentic caller. This is in contrast to the Hunt system in which the predetermined call condition is taken into account to set up the thresholds before a determination is made on whether the caller is an authentic caller (emphasis in original).

After careful review of the Hunt reference in light of the arguments of record, we are in agreement with the Examiner's position as stated in the Answers. We do agree with Appellant that Hunt's establishment of the threshold "windows" for the acceptance criterion takes place prior to call placement; however, this is not the feature that the Examiner relies on for disclosing the claimed risk factor limitations. In the Examiner's interpretation of Hunt, with which we agree, a risk factor is indeed introduced into Hunt's system after a determination that a voice print match does not fall within an acceptance threshold. This risk factor takes

the form of a system prompt which asks the caller to input personal information such as social security or account numbers (Hunt, column 7, line 1). The call in question will not be completed until the caller satisfies this risk factor condition by providing the correct personal information.

For all of the above reasons, the Examiner's 35 U.S.C. § 102(e) rejection of independent claims 1, 11, and 19 is sustained.

Turning to a consideration of dependent claims 2, 10 and 12, separately argued by Appellant, we sustain the 35 U.S.C. § 102(e) rejection of these claims as well. Dependent claims 2 and 12 are directed to the determination made after a matching process is performed as whether a call is to be completed. In our view, the passages from Hunt discussed supra relating to the introduction of the personal information system prompt clearly meet such requirement. It is further our opinion that the risk factors in Hunt are clearly resident in an "audio response unit" as broadly recited in dependent claim 10. Dependent claims 3, 8, 9, 13, 18, 20, and 24 have not been argued separately and, accordingly, fall with their base

claim.

Since all of the claimed limitation are present in the disclosure of Hunt, the Examiner's 35 U.S.C. § 102(e) rejection of appealed claims 1-3, 8-13, 18-20, and 24 is sustained.

We next consider the Examiner's rejection of dependent claims 4-6, 14-16, 21, and 22 under 35 U.S.C. § 103 as being unpatentable over Hunt in view of Hou. As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189

USPQ 143, 147 (CCPA 1976).

Dependent claims 4-6, argued separately by Appellant, are each directed to the routing of a call under a verification procedure to an operator station if incorrect answers are supplied in response to the automated system request. In addressing this claimed feature, the Examiner proposes to modify the purely automated system of Hunt by relying on the Hou reference which provides a teaching of routing a verifying call to an operator after two attempts at automated verification. In the Examiner's line of reasoning (Answer, page 7), the skilled artisan would have been motivated and found it obvious to provide for the forwarding of calls to an operator in Hunt, as taught by Hou, to overcome the possible failure of the automated query process due to environmental factors (e.g. noise) and program malfunctioning.

In response, Appellant attacks (Reply Brief, page 6) the Examiner's establishment of motivation for combining Hou with Hunt since the Examiner's suggested motivation is not explicitly disclosed in Hou. However, despite any explicit teaching in Hou of the reason for providing operator station

routing, we find the Examiner's rationale with regard to the obviousness of providing routing of calls to an operator to be reasonable so as to establish a prima facie case. In considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). Since the Examiner's prima facie case of obviousness has not been overcome by any persuasive arguments by Appellant, the 35 U.S.C. § 103 rejection of dependent claims 4-6, as well as dependent claims 14-16, 21, and 22 not separately argued by Appellant, is sustained.

Lastly, we consider the Examiner's 35 U.S.C. § 103 rejection of dependent claims 7, 17, and 23, grouped and argued together by Appellant, as unpatentable over Hunt in view of Johnson. The Examiner, as the basis for the obviousness rejection of these claims, proposes to modify the risk factor teachings of Hunt by adding additional risk factors such as those taught by Johnson, to increase the

versatility and security of Hunt's call verification system.

Appellant's arguments in response (Reply Brief, pages 7 and 8) do not assert Johnson's lack of disclosure of the particular claimed risk factors but, rather, focus on the contention that Johnson's risk factors are directed solely to the historical pattern of usage of a particular calling card subscriber. Appellant contrasts this teaching with the instant invention which is concerned with all callers, not a specific individual making a call.

In our view, however, it is apparent from the Examiner's line of reasoning that Johnson was cited for the limited purpose of supplying a teaching of specific criteria which could be added to improve the call verification risk factor teachings of Hunt. The Johnson reference was used by the Examiner in combination with Hunt to establish the basis for the obviousness rejection. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d

413, 425, 208 USPQ 871, 881 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986). In view of the above discussion, the Examiner's obviousness rejection of dependent claims 7, 17, and 23 is sustained.

In summary, we have sustained each of the Examiner's rejections of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-24 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

STANLEY M. URYNOWICZ, Jr. Administrative Patent Judge	)
JERRY SMITH Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND) INTERFERENCES
JOSEPH F. RUGGIERO Administrative Patent Judge	)

JFR:pgg
MCI Communications Corporation
Office of The General Counsel
ATTN: IP/TT
1133 19th Street, N.W.
Washington, DC 20036